

2010 WL 9013013 (D.C.Super.) (Trial Pleading)  
Superior Court of the District of Columbia,  
Civil Division.  
District Of Columbia N/a

Thelma REED, Plaintiff,

v.

H.A. FAMILY LANDSCAPE CO. Howard A. Akers Theresia M. Akers, Defendants.

No. 2010 CA 007636 B.  
2010.

**Plaintiff's First Amendment to the Verified Complaint**

Joan A. Harvill, D.C. Bar: 309112, Attorney for Plaintiff, 1629 K. Street N.W., Suite 300, Washington, D.C. 20006, Tele: (202) 466-6346, Fax: (202) 331-3759, E-mail: Abogadaxyz@aol.com.

Judge [Craig Iscoe](#).

Next Event: Proponent's Rule 26(B)(4)

Due: 07/05/2011

COMES NOW, Plaintiff, Thelma Reed, by her Attorney, and states as follows:

***JURISDICTION AND PARTIES***

1. This Court has jurisdiction over the subject matter pursuant to D.C. Code Title 11-921(a).
2. This Court may exercise personal jurisdiction over the Defendants pursuant to D.C. Code Ann. Title 13-423(a) because Plaintiff's claims for relief arise from the Defendant's transaction of business in the District of Columbia.
3. Plaintiff Is a resident of the District of Columbia.
4. Defendant, Howard A. Akers, Is a Partner in a company called H.A. Family Landscape Company. He performs home improvement contractor and landscaping business in the District of Columbia. The mailing address of Defendant, Howard A. Akers, is 13641 Lindendale Road, Woodbridge, VA 22193.
5. Defendant, Theresia M. Akers, is a Partner in H.A. Family Landscape Co. Her mailing address is 13641 Lindendale Road, Woodbridge, VA 22193.
6. Defendant, H.A. Family Landscape Co., is a Partnership business whose Partners are Theresia Akers and Howard Akers. H.A. Family Landscape Co., engages in home improvement work in the District of Columbia. Its offices are located at 13641 Lindendale Road, Woodbridge, VA 22193.
7. At the time Defendant, Howard A. Akers, entered into a Home Improvement Contract with Plaintiff on behalf of himself and the Partnership of Defendant, H.A. Family Landscape Co., on April 18, 2007 to install a sidewalk, a raised flower bed, and a small patio at her home and on June 3, 2007 to install a patio on Plaintiff's son's property, Defendants, Howard Akers,

Theresia Akers and H.A. Family Landscape Co., were not licensed as Home Improvement Contractors or Home Improvement Sales Persons in the District of Columbia. H.A. Family Landscape Co., was not incorporated in the District of Columbia at the date and times In question.

### *NATURE OF THE CASE*

8. Plaintiff, Thelma Reed, is an **elderly**, relatively unsophisticated resident of the District of Columbia unschooled in contract negotiations.

9. Defendant, Howard Akers, trading as and operating as Defendant, H.A. Family Landscape Company, induced Plaintiff to enter into a Home Improvement Contract with him to install a walkway, a raised flower bed and a small patio on her property, and a patio on property owned by her son. Initially Defendant, Howard Akers, entered into verbal agreements for home improvement on Plaintiff's home and provided Plaintiff with forms that had the Title of the Form listed as being H.A. Family Landscape Company which form simply listed the work to be performed on the properties and the cost of material and labor along with the sum required to be paid as a down payment for the home improvement work. Defendant did not sign the Forms. Defendant did not provide a D.C. License number on the Forms.

10. The Initial verbal Agreement for Home Contracting work between Plaintiff and Defendant, Howard Akers and the Partnership, H.A. Family Landscape Co., is dated April 18, 2007. It is not a formal written contract but memorializes the verbal agreement with Plaintiff for home improvement work by listing the work to be performed, the cost of the work and the total cost with a down payment of \$623.78 with a balance of \$1,247.56 to be paid within 10 days of the date of April 18, 2007. There are other indications of contracts between the parties dated April 30, 2007, June 2, 2007, June 23, 2007 and July 14, 2007. See Exhibit "1" for a copy of the Forms memorializing the verbal contracts.

11. Defendant, Howard Akers and the Partnership, trading as H.A. Family Landscape Company, on June 3, 2007 provided a written contract to Plaintiff for her signature to install a patio on property owned by Plaintiff's son. The Contract required Plaintiff to make an advance payment to the unlicensed home improvement contractor, Defendant, Howard Akers, in the sum of \$2,277.00 before work was performed with a final payment of \$2,277.00 upon completion of the work listed on the June 3, 2007 written contract. Defendant did not sign that contract. Defendant did not provide a D.C. License number on the Contract. See Exhibit "2". Defendant was not licensed to perform Home Improvement Work as a Home Improvement Contractor or as a Salesman in the District of Columbia on June 3, 2007.

12. The work performed by Defendant, Howard Ackers, was of Inferior quality. The Walkway was constructed by the placement of metal rails on either side of the walkway. In between the metal rails the Defendant placed gravel and put the walking stones on top of the loose gravel. Every time it rains the gravel washes out and ends up on the lawn leaving the walking area uneven and the grass full of gravel. The raised flower bed was too shallow. Defendant repeatedly for a period of several months promised Plaintiff he would return to add more soil and conduct other repairs but never did so. Defendant in performing the work on Plaintiff's home punctured pipes in Plaintiff's water irrigation system on two different occasions. When Plaintiff asked Defendant what was causing water to accumulate on her Property, Defendant told her the water was coming from the neighbor's yard. Several months later, Plaintiff discovered the water was coming from pipes Defendant had punctured. The total cost of repairs to the punctured pipes was \$261.40. Additionally there was a dramatic increase in the water bill of Plaintiff due to the leaking pipes.

13. The work performed by Defendant when installing the patio on Plaintiff's son's property was also of inferior quality. The installed Patio was a gift from Plaintiff to her son. The Patio fell apart after it was installed. When Defendant was called back to repair the Patio, he put concrete in the broken spaces to hold it up. The patio is smeared with uneven concrete, broken pieces of concrete and the patio slabs are uneven creating a flooding effect near the doorway to the home.

14. For several months after the work was performed, Defendant repeatedly promised Plaintiff he would return to perform the work at her home and at her son's home as he promised to do, but failed and refused to return to complete the job in a workmanlike fashion.

### ***FACTS***

15. On April 18, 2007, April 30, 2007, June 3, 2007, July 14, 2007 and subsequent thereto, Defendant was not licensed as a Home Improvement Contractor or Salesman in the District of Columbia when he entered into verbal contracts and a written contract with Plaintiff. The contracts required advance payments before work was to begin, Exhibits "1" and "2".

16. None of the contracts or what purported to be contracts were signed by Defendant, Howard Ackers, as required by law.

17. None of the contracts provided a license number of a home Improvement contractor or of a home improvement sales person as required by law.

18. Plaintiff was not provided written statutory Notice of her right to cancel the April 18, 2007 Contract or the subsequent contracts for work to be performed on her home or her son's home as required by law.

19. The estimated cost of removing the broken pieces of concrete in the patio built for her son, and building a new patio and repair the work performed on Plaintiff's home is approximately \$15,555.00.

### ***COUNT ONE UNLAWFUL TRADE PRACTICES***

20. Plaintiff incorporates herein and makes a part hereof Paragraphs 1-17 supra, as though fully set forth herein.

21. Plaintiff is a consumer pursuant to D.C. Code Ann. Title 28-3901(a)(2) (2001 Ed.). Plaintiff purchased consumer goods and services, namely home improvement services from Defendants, Howard A. Akers trading as H.A. Family Landscape Company, the Partnership.

22. Defendants are merchants pursuant to D.C. Code Ann. Title 28-3901(a)(3). Defendants sold consumer goods and services, namely home improvement services to the Plaintiff.

23. Defendants committed unlawful trade practices by making misrepresentations of material facts that guaranteed the material sound, and the work to be completed in a neat and workmanlike manner. Said misrepresentations were made with a tendency to mislead in violation of D.C. Code Ann. Title 28-3904(e).

24. Defendants, Howard Akers, and the Partnership trading as H.A. Family Landscape Co., committed unlawful trade practices by failing to state material facts which failure tends to mislead in violation of D.C. Code Ann. Title 28-3904(f).

25. Defendants committed unlawful trade practices by knowingly taking advantage of the inability of the **elderly** Plaintiff to reasonably protect her interest by reason of disability, and similar factors in violation of D.C. Code Ann. Title 28-3904(r)(5).

26. Defendants committed unlawful trade practices in violation of D.C. Code Ann. 28-3604(dd) by an unjustified failure or refusal to complete the home improvement work in a neat and workmanlike manner as specified in the June 3, 2007 contract with Plaintiff in violation of [D.C. Mun. Regs. Title 16 Section 813.3\(i\)](#).

27. Defendants committed unlawful trade practices in violation of D.C. Code Ann. Title 28-3904(dd) by requiring and accepting advance payments with respect to the April 18, 2007 and June 3, 2007 contracts. Said monies were received by Defendant,

Howard Akers, an individual not licensed as a home improvement contractor, as required by [D.C. Mun. Regs. Title 18 Section 800.1](#) of a contractor who demands advance payments.

28. Defendants committed unlawful trade practices in violation of D.C. Code Ann. Title 28-3904(dd) by failing to provide written signed contracts to Plaintiff on April 18, 2007, April 30, 2007 through July 14, 2007, and Defendant failed to sign the written home improvement contract entered into with Plaintiff on June 3, 2007 as required by [D.C. Mun. Regs. Title 16 Section 808.3](#).

29. Defendants committed unlawful trade practices in violation of D.C. Code Ann. Title 28-3904(dd) by failing to provide a valid home contractor's license in any of the contracts at issue as required by [D.C. Mun. Regs. Title 16 Section 808.4](#).

30. Defendants committed unlawful trade practices in violation of D.C. Code Ann. Title 28-3904(dd) by failing to provide Plaintiff with Statutory Notice of her right to reject the April 18, 2007 and subsequent Contracts within 72 hours of the signing in violation of [D.C. Mun. Regs. Title 16 Section 808.6](#).

31. Defendants committed an unlawful trade practice in violation of D.C. Code Ann. Title 38-3904(n) (2001 Ed.).

32. Plaintiff has been damaged as a result of Defendant's unlawful trade practices in the approximate sum of \$22,138.26.

33. As a result of Defendant's unlawful trade practices, Plaintiff is entitled to the return of all monies paid to Defendants or incurred in repairing the broken irrigation system's pipes In the sum of \$6,583.26, and the estimated cost of repairs in the sum of \$15,555.00, and treble damages, punitive damages, reasonable attorney's fees and such other and further relief as the court deems just and fair pursuant to D.C. Code Ann. Title 28-2905(k)(i) (2001 Ed.).

#### ***COUNT 11 RESCISSION FOR VIOLATIONS OF D.C. MUN. REGS. TITLE 16***

34. Plaintiff Incorporates herein and makes a part hereof Paragraphs 1-31, supra.

35. The Defendant's violations of [D.C. Mun. Regs. Title 16 Sections 800.1; 808.3; 808.4; 808.5; 808.6; 813.3\(h\); 813.3\(1\)](#) render the following verbal agreements void and unenforceable April 18, 2007; April 30, 2007; June 2, 2007; June 23, 2007; July 14, 2007. For the same reason the June 3, 2007 written contract is void and unenforceable.

36. Consequently, the Plaintiff is entitled to a refund of all payments made by Plaintiff to Defendants and the costs of repair of Plaintiff's broken pipes in the sum of \$6,583.26 already paid and the estimated costs of repairs in the sum of \$15,555.00.

#### ***COUNT 111 BREACH OF CONTRACT***

37. Plaintiff incorporates herein by reference and makes a part hereof Paragraphs 1-34, supra.

38. Plaintiff asserts that the verbal agreements between Plaintiff and Defendants of April 18, 2007, April 30, 2007; June 2, 2007; June 23, 2007, and July 14, 2007 are void and unenforceable, as is the written contract between Plaintiff and Defendant dated June 3, 2007. Plaintiff asserts in the alternative that in the event said contracts are determined to be valid, Defendant intentionally breached said contracts by failing to perform the work in a neat and workmanlike manner, and by failing and refusing to make repairs to the shoddy work performed on Plaintiff's home and that of her son's home.

39. Pursuant to Title 16 D.C. Mun. Regs. An unlicensed Home Improvement Contractor is not entitled to any advance payments until all the home improvement work is completed. Consequently Plaintiff was not required to pay Defendant any down payment

or periodic payments for the work to be performed. Plaintiff paid in advanced payments, periodic payments, final payments and costs of repairs for the damage to Plaintiff's property the sum of \$6,583.26.

40. As a result of the Defendant's breaches of the contracts, the Plaintiff is entitled to actual damages, incidental and consequential damages, reasonable attorney's fees, costs of suit and such other and further relief as this Court deems just and fair.

***PRAYER FOR RELIEF***

WHEREFORE, Thelma Reed, Plaintiff, respectfully requests and prays for judgment in her favor including:

1. Recession of the home improvement contracts and return of the advance payments, periodic and final payments and costs of repairs to Plaintiff's punctured pipes, in the sum of \$6,583.26 and cost of repairs to Plaintiff's son's Patio and the replacement of the work done on Plaintiff's home in the sum of \$15,555.00.
2. Treble damages.
3. Interest at the statutory rate.
4. Punitive damages.
5. Alternatively in the event the contracts are found to be valid, compensatory, incidental and consequential damages for breach of contract.
6. Attorney's Fees and costs of Suit, and such other and further relief as the Court deems just and fair.

***JURY DEMAND***

Plaintiff requests a jury trial.

Respectfully submitted,

/s/

Joan A. Harvill,

D.C. Bar: 309112

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